

FLORENCE LA ROSE (ON RECONSIDERATION)

IBLA 94-368

Decided November 5, 1996

Petition for reconsideration of Florence La Rose, 135 IBLA 268 (1996).

Petition granted; Florence La Rose, 135 IBLA 268 (1996), reversed on reconsideration.

1. Alaska: Native Allotments–Rules of Practice: Appeals: Generally–Rules of Practice: Appeals: Board of Land Appeals–Rules of Practice: Appeals: Reconsideration

A decision reversing a BLM decision and referring for hearing a question of fact concerning a Native allotment application is reversed upon reconsideration when evidence submitted in support of the petition for reconsideration demonstrates the applicant is not entitled to an allotment.

APPEARANCES: Florence La Rose, pro se; Joseph D. Darnell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Counsel for the Bureau of Land Management (BLM), has filed a timely petition for reconsideration of our decision in Florence La Rose, 135 IBLA 268 (1996). In that decision, we reversed a BLM decision rejecting Florence La Rose's Native allotment application AA-43475.

BLM's action rested upon a finding that La Rose was a member of a class established by Fanny Barr v. United States, No. A76-160 (D. Alaska 1982). As a consequence of this finding, BLM concluded that, inasmuch as the land sought by La Rose had been conveyed to the State, the authority of BLM to act upon La Rose's application was limited by a ruling the court made in the Barr case, cited above. If La Rose were a member of the class, BLM could only request relinquishment by the State of the lands claimed. If the State refused to return the land, as it did, BLM could take no further action.

The history of the Barr proceeding and a summary of the record upon which our prior decision rests is stated at 135 IBLA 269-271 and will not

be repeated here. Membership in the Barr class was limited to persons who had used an organization called RuralCAP as an intermediary to forward Native allotment applications to the Department. Based upon the record presented to us, which we had specifically asked BLM to supplement, by order dated February 20, 1996, with "any court orders or other documents purporting to certify La Rose as a member of the Fanny Barr class," we found that La Rose was not a member of the class constituted by the district court because her membership in the class was not documented on the record before us, and because she had shown that she was not eligible to be a Barr class member since she had not used RuralCAP to handle her application. Finding that further consideration of her application was warranted by her statement that she had filed some sort of allotment documents with the Department in 1971, we set aside BLM's finding that she filed her application in June 1981 and referred the matter for a hearing on the question whether there was an allotment application from La Rose pending before the Department on December 18, 1971. See 135 IBLA at 272.

Arguing that our prior decision requires BLM to act contrary to orders issued by the district court in the Barr litigation, BLM has now, in support of the petition for reconsideration, provided further documentation showing how the Barr class was constituted. As part of this information, BLM has provided a list of the persons who comprised the class. By stipulation approved by the district judge on January 10, 1985 (Petition Exhibit D), it was ordered that the names of persons seeking membership in the class were to be published. The name Florence N. La Rose appears on a list of proposed class members that was published pursuant to the court's order. The list was subject to challenge until April 30, 1985, when, there being no objection to her inclusion in the class, she was accepted into membership therein. See Petition Exhibit F. The published membership list indicates that her allotment number is AA-43475, covering land in sec. 17, T. 31 N., R. 2 W., Seward Meridian, containing approximately 160 acres. This accurately describes the application filed by La Rose in 1981. See Florence La Rose at 135 IBLA 268. La Rose does not deny that this record of events describing her participation in the class action is accurate.

La Rose reiterates, however, that she filed whatever documents were sent by her to the Bureau of Indian Affairs (BIA) without assistance from the RuralCAP organization (Letter from La Rose filed May 28, 1996). Insistence upon this point amounts to a denial of eligibility for membership in the Barr class, since the district court's order of January 10, 1985, provided that the first requirement for membership in the class was that she "gave a Native allotment application to a RuralCAP worker before December 18, 1971, and the application was not delivered to the United States Government." Id. at 2. Enclosed with her letter filed with this Board on May 28, 1996, is a letter dated September 24, 1984, to La Rose from the Tanana Chiefs Conference, Inc., suggesting she obtain information concerning the Barr litigation. She also includes a copy of a letter to

her from BIA dated August 26, 1971, stating that allotment application forms were enclosed. Concerning the use to which she put these forms, she indicates that she mailed a form thus supplied her to BIA "from Gold Creek Section on the Alaska Railroad." Explaining that the "native allotment [form] was never returned to me," La Rose says she thereafter "filed again in June 1981." She does not, however, address the question raised by BLM concerning the effect of permitting her name to be published, without objection during the time allowed by the district court order, as one eligible for, and seeking membership in, the Barr class.

[1] We must therefore conclude that La Rose became a member of the Barr class in 1985. She allowed her name to be published, without objection, as a candidate for inclusion in the class, and consequently became a member of the class on April 30, 1985. Under the terms of an order dated August 20, 1982 (Petition Exhibit C), members of the class agreed to be bound by the terms of the court ordered settlement, which included a provision that they "would waive any right you have to require the United States to recover title to land you claim, if the United States has already conveyed that title to someone else." Id. at 4. Implementing this provision of the class action settlement decree, La Rose executed a waiver dated March 14, 1984, which states, pertinently, that if the land sought by her application

has been previously conveyed by the United States to any other person, entity, or the State of Alaska, the United States shall not be bound to, nor will it initiate any court action to set aside said conveyance or reissue said land. I hereby waive any right I may have to compel such action or to any compensation or other relief from the United States.

It is this waiver of rights that prevents members of the Barr class from pursuing further relief in the event their claims are rejected in proceedings brought under the class action decree.

It is now apparent that La Rose did, in fact, become a member of the Barr class in 1985. The case file shows she bases her allotment claim upon qualifying use of the land claimed by her from 1966 through 1973. Nonetheless, all the land she claims was conveyed to the State of Alaska on May 31, 1967, in response to an application filed by the State on August 3, 1965. See Florence La Rose at 135 IBLA 269. Consequently, in conformity to the settlement agreement approved by the district court in the Barr case, BLM concluded correctly that when the State refused to reconvey the land sought by La Rose's application, BLM had no choice but to reject her application. Under the terms of the Barr settlement decree, since the land she sought was previously conveyed out of Federal ownership, and since she had waived any possibility of pursuing further relief beyond the Barr proceedings, there was no obligation or authority to take any other action on her behalf.

Accordingly, on reconsideration, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we therefore reverse our decision in Florence La Rose, 135 IBLA 268 (1996), and affirm the February 11, 1993, BLM decision rejecting her Native allotment AA-43475.

Franklin D. Amess
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

